RECENT CASES

CARRIERS—SLEEPING CAR COMPANIES—PASSENGERS' ARTICLES —LOSS—CONTRIBUTORY NEGLIGENCE—PULLMAN V. VANDERHOVEN, 107 S. W. 147 (TEX.)—*Held,* that where a sleeping car company's porter was charged with misappropriating a passenger's diamond ring, which it was claimed he found in the berth, it was no defense to the sleeping car company's liability therefor that the passenger was negligent in losing it.

A sleeping car company is neither a common carrier nor an innkeeper and consequently is not an insurer of the goods and effects of its passengers, but is a bailee for hire and as such must exercise reasonable care to protect the passenger's goods. *Blum v. Southern Palace Car Co.,* Fed. Cases 1574; *Lewis v. N. Y. Sleeping Car Co.,* 143 Mass 267, 273. By the contract which exists between the passenger and the company, it becomes the duty of the company to exercise reasonable care and to keep a watch on the car and its occupants while the relation lasts. *Pullman Car Co. v. Martin,* 95 Ga. 314. Where it becomes the duty of a principal by the terms of a contract to do certain things and he employs an agent to do those things, the principal is absolutely liable for any breach by the agent. *Wood, Master and Servant,* 321; *Pullman Palace Car Co. v. Garvin,* 93 Tenn. 53. And so if the porter, who is employed to perform the duties imposed on the sleeping car company, fails to perform them and steals the property of a passenger, the company is liable. *Root v. N. Y. C. and S. Car Co.,* 28 Mo. App. 199; *Pullman Palace Car Co. v. Matthews,* 74 Tex. 654. As the court in the principal case says, there is "no principle of law which would exonerate one from taking and appropriating another's property because the owner was negligent in losing it."

CARRIERS—STREET CARS—INJURY TO PASSENGER—DANGEROUS PLACE—FELDHEIM V. BROOKLYN, Q. C. & S. R. Co., 107 N. Y. SUPPL. 413.—*Held,* that where plaintiff was injured while riding on the rear bumper of a crowded car, he assumed the risk incident to that position, although his fare was accepted.

In *Bard v. Penn. Traction Co.,* 176 Pa. St. 97, plaintiff was riding on the bumper, but the ground of absolving defendant from liability seemed to rest on the fact that conductor did not know he was there. Where it was the custom of passengers to ride on the footboards of a stage sleigh when the seats were full, the defendant

was held accountable. *Spooner v. Brooklyn City R. R. Co.*, 54 N. Y. 230. To the same effect is *Clark v. Eighth Ave. R. R. Co.*, 36 N. Y. 135. But it has been held that the riding upon the platform of a passenger car upon a railroad is such negligence on the part of the passenger as will bar his recovery for injuries sustained by being thrown from the platform in rounding a curve. *Goodwin v. Boston & Maine R. R.*, 84 Me. 203. Here too it was an excursion train where tickets had been sold in advance, and all the seats had been taken. *Worthington v. Central Vt. R. R. Co.*, 64 Vt. 107, is in harmony with this last holding, but by way of *dictum* it was indicated that it would have been different if the passenger was forced to be on the platform by some circumstance. Whether acceptance of fare is such acquiescence as to overbalance all these objections, *Solomon v. Manhattan R. R. Co.*, 103 N. Y. 437, would seem to be in point, when it says: "Where a passenger attempted to alight from a moving train it is not enough to rebut presumption of his negligence by proof that trainmen acquiesced in his action." But it has been held that the mere stopping of a crowded car to take on a passanger is evidence of gross negligence when seats are not attainable. *The Topeka City R'way Co. v. Higgs*, 38 Kan. 375.

CONTRACTS—ADDITIONAL CONSIDERATION FOR COMPLETING EXECUTORY CONTRACT—LINZ V. SCHUCK, 67 ATL. (MD.) 286.—*Held*, that the occurrence of substantial and unforeseen difficulties in the construction of a cellar casting upon the contractor an additional burden not contemplated by the contract makes his promise to complete the work a sufficient consideration for the promise of the owner to pay him additional consideration, even though the contract was absolute on its face.

This case is undoubtedly an exception to the general rule that if the rghts of a contractor are fixed by the contract, as here, any promise to pay him extra for doing what the contract binds him to do is without consideration, *Nelson v. Pickwick Ass. Co.*, 30 Ill. App. 333; *Ritenon v. Mathews*, 42 Ind. 7. And it is immaterial that the additional sum is necessary for the contractor to complete the building without loss. *Willingham Sash & Door Co. v. Drew*, 117 Ga. 850. The opposite rule, however, prevails, where there was ambiguity in the original contract. *Wear Bros. v. Schmelzer*, 92 Mo. App. 314. Various courts, recognizing the equities of particular cases, rather than the weight of authority, have assigned several grounds for the doctrine that there is consideration for additional compensation. Thus, there is consideration in gaining specific performance from the contractor, rather than rely-